

STATE OF MICHIGAN
COURT OF APPEALS

BILLY JOE SINGLETON,

Plaintiff/Counter-defendant-
Appellant/Cross-Appellee,

v

JAMES VERSTRATE,

Defendant/Counter-plaintiff-
Appellee/Cross-Appellant.

UNPUBLISHED

February 19, 1999

No. 207201

Newaygo Circuit Court

LC No. 96-016433 CH

Before: Fitzgerald, P.J., and Holbrook, Jr., and O’Connell, JJ.

PER CURIAM.

This is an appeal from a trial court finding that defendant had acquired title to a strip of land under the doctrine of acquiescence. Defendant cross appeals, arguing he was entitled to a judgment based on the theory of adverse possession as well. We affirm.

Plaintiff argues that the trial court erred in finding that the doctrine of acquiescence applied. Plaintiff asserts that the record does not support a finding that the wire fence at issue was meant to mark the boundary between the parties’ properties. We disagree. “Actions to quiet title are equitable in nature; this Court reviews such actions de novo. We review the trial court’s factual findings for clear error.” *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996) (citations omitted). “A finding is clearly erroneous when, although there is evidence to support the finding, this Court is left with a definite and firm conviction that a mistake has been made.” *Berry v State Farm Mutual Automobile Ins Co*, 219 Mich App 340, 345; 556 NW2d 207 (1996).

Michigan case law has identified three subdivisions of the law of acquiescence: “(1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from intention to deed to a marked boundary.” *Sackett, supra* at 681. Accord *Maes v Olmsted*, 247 Mich 180, 183-184; 225 NW 583 (1929); *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993); *Pyne v Elliot*, 53 Mich App 419, 426-428; 220 NW2d 54 (1974). The relevant subdivision in this case is the first, acquiescence for the applicable statutory period. The applicable statutory period is fifteen years. *West Michigan Dock & Market Corp v*

Lakeland Investments, 210 Mich App 505, 511; 534 NW2d 212 (1995); *Kipka*, *supra* at 438; *Elliott*, *supra* at 426. Unlike adverse possession, acquiescence does not require that the possession be hostile or without permission. *Walters v Snyder*, 225 Mich App 219, 224; 570 NW2d 301 (1997).

In the absence of the original survey monuments, other artificial or natural monuments can serve to mark the boundary line. A long established fence is just the type of monument that Michigan courts are inclined to recognize as marking the boundary between adjacent pieces of property. *Corrigan v Miller*, 96 Mich App 205, 209; 292 NW2d 181 (1980). However, the presumption that a fence is intended to mark a boundary line can be overcome if evidence establishes that the fence was actually constructed for some other reason. *McGee v Eriksen*, 51 Mich App 551, 557; 215 NW2d 571 (1974).

There is nothing in the record beyond mere speculation to support an assertion that the long established wire fence at issue in the case at hand was intended for any purpose other than marking the boundary line. Indeed, defendant's immediate predecessor in title stated that the fence had served as the border between defendant's property and plaintiff's property since at least 1975. See *Renwick v Noggle*, 247 Mich 150, 152; 225 NW2d 535 (1929) (observing that if "the acquiescence of the predecessors in title can be tacked on that of the parties, and if the whole period of acquiescence exceeds fifteen years, the line becomes fixed"). Moreover, defendant and his ex-wife testified that they believed that their property went all the way to the fence line and that they had maintained the area since their purchase of the property in 1982. As for plaintiff, his behavior over the years evidenced his acquiescence to the boundary marked by the fence. See *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974). The fact that the fence had deteriorated over the years is of no consequence. The requirement that a boundary be marked by a monument does not mean that the monument must be inviolable and totally visible. See *Breakey v Woolsey*, 149 Mich 86, 87-90; 112 NW 719 (1907); *Murray v Buikema*, 54 Mich App 382, 387; 221 NW2d 193 (1974). Based on this evidence, we conclude that the trial court did not clearly err in finding that because the parties and their predecessors in title had acquiesced to the fence line serving as the boundary between the two parcels, defendant had acquired title to the disputed strip of land.

Plaintiff also argues that the court erred in permitting defendant's predecessor in title to testify regarding statements allegedly made by plaintiff's former co-owner in the property, who was deceased. Because this evidence is of no consequence to our conclusion that the parties had acquiesced to the boundary, we decline to address it. Further, in light of our affirmance of the trial court's finding as to acquiescence, it is not necessary to address defendant's cross-appeal.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell